NO. 21910

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTOR LANGSTON LANGHORN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

WM. MATTHEW BYRNE, JR.,
United States Attorney,
ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,
ANTHONY MICHAEL GLASSMAN,
Assistant U. S. Attorney,

1200 U. S. Court House
312 North Spring Street
Los Angeles, California 90012

Attorneys for Appellee,
United States of America.

NO. 21910

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTOR LANGSTON LANGHORN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

WM. MATTHEW BYRNE, JR.,
United States Attorney,
ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,
ANTHONY MICHAEL GLASSMAN,
Assistant U. S. Attorney,

1200 U. S. Court House
312 North Spring Street
Los Angeles, California 90012

Attorneys for Appellee,
United States of America.

TOPICAL INDEX

TABLE OF AUTHORITIES

NO. 21910

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTOR LANGSTON LANGHORN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

I

JURISDICTIONAL STATEMENT

The appellant, Victor Langston Langhorn, was indicted on December 14, 1966 [C. T. 2]. 1/ The indictment was brought under 50 U. S. C., App. Section 462, and charged that the appellant failed and refused to perform a civilian work assignment as ordered. The case proceeded to trial before the Honorable Jesse W. Curtis, United States District Judge. The appellant was found guilty and sentenced to the custody of the Attorney General for a period of three years [C. T. 30].

1/ "C. T." refers to Clerk's Transcript of the proceedings.

Appellant's Notice of Appeal was timely filed on April 4, 1967 [C. T. 32].

The jurisdiction of the District Court was based upon Title 50, United States Code, App., Section 462, Title 18, United States Code, Section 3231, and Rule 18 of the Federal Rules of Criminal Procedure. This Court has jurisdiction to review the judgment of the District Court pursuant to Title 28, United States Code, Sections 1291 and 1294, and Rule 37(a) of the Federal Rules of Criminal Procedure.

II

STATUTE INVOLVED

Title 50, United States Code, App., Section 462, provides in pertinent part as follows:

> "Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this title . . . or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty . . . or who otherwise evades or refuses . . . service in the armed forces or any of the requirements of this title . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title . . . or rules,

regulations or directions made pursuant to this title . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or both. . . ."

III

QUESTIONS PRESENTED

1. Was there a basis in fact for appellant's I-O classification?

2. Was appellant's civilian work assignment appropriate?

IV

STATEMENT OF FACTS

The appellant first registered with the Selective Service System on July 5, 1960 [Ex. p. 1]. 2/ On May 1, 1962, the appellant was classified I-A. The appellant appealed from this I-A classification on May 11, 1962 [Ex. p. 19].

On May 17, 1965, the Department of Justice tentatively determined that the registrant should be classified in Class I-O [Ex. p. 32]. On July 22, 1965, the appellant was classified I-O by his appeal board [Ex. p. 45].

2/ Refers to appellant's Selective Service filed admitted in evidence.

On September 2, 1965, appellant requested a change in his classification from Class I-O to that of 4-D [Ex. p. 50]. On October 4, 1965, the appellant was mailed a special report for Class I-O registrants [Ex. p. 58], and on October 26, 1965, the appellant was requested to select the type of civilian work assignment which he would be desirous of performing [Ex. p. 64]. The appellant responded that he would refuse to accept any civilian work assignment proffered [Ex. p. 64].

The District Coordinator arranged a meeting between the Local Board and the registrant on April 12, 1966, to see if an appropriate work assignment could be found for appellant [Ex. p. 69]. On April 12, 1966, the appellant met with his Local Board and Captain Proffitt, the District Coordinator. At this meeting it was determined that appellant worked 8 hours per day as a gas station attendant and that appellant was not a full time minister for the Jehovah's Witnesses and not a Regular Pioneer [Ex. p. 71]. Appellant signed a statement of refusal to accept a civilian work assignment [Ex. p. 72]. At this time it was determined that work as an institutional helper at the Los Angeles County Department of Charities would be an appropriate civilian work assignment for the appellant.

On May 11, 1966, appellant's civilian work assignment was approved [Ex. p. 75], and on July 19, 1966, appellant was ordered to report for a civilian work assignment at the New General Hospital in Los Angeles. Appellant was ordered to report not later than July 20, 1966 [Ex. p. 79]. On July 19, 1966, appellant reported to the Los Angeles County Department of Charities and

refused to accept a civilian work assignment.

V

ARGUMENT

A. THE BOARD DID NOT ACT ARBITRARILY AND CAPRICIOUSLY IN DENYING APPELLANT'S REQUEST FOR A MINISTERIAL EXEMPTION.

Appellant argues that he "presented a prima facie case" for a ministerial classification and that no contrary evidence was ever placed before the Board. A careful reading of appellant's file, however, discloses that no such prima facie showing was ever made. Furthermore, there is an abundant amount of evidence to the contrary.

On June 10, 1962, appellant first applied for a ministerial classification after he had been previously classified I-A. However, nowhere did appellant allege that he was a Pioneer minister, the leader of his congregation or that he worked at least 100 hours per month preaching his faith. In fact, appellant's request for ministerial classification was phrased in the alternative, as follows: "Being a minister, I feel that I am entitled to a minister's classification as provided for by the Selective Service Act. Failing that, I feel that I am entitled to consideration as a conscientious objector to both combatant and non-combatant service." [Ex. p. 22]

In short, the only showing made by appellant at that time as

to his qualifications for the ministerial classification was that "All those associated with the Watchtower Society are ministers and are to preach the Kingdom to the people." [Ex. p. 25]

Clearly the showing made by appellant was inadequate to establish him as being within that class of people entitled to the ministerial classification. An exemption or deferment is not a matter of right but is a privilege, and the burden is upon the registrant to establish his eligibility for exemption or deferment to the satisfaction of the local board. Lingo v. United States, No. 21630 (Oct. 26, 1967, 9th Circuit) (slip sheet opinion).

Appellant was subsequently classified I-O and ordered to report for a civilian work assignment. On April 12, 1966, appellant met with his Local Board and Captain Proffitt, the representative of the State Director, to see if an appropriate civilian work assignment could be selected. Appellant again affirmed that he would refuse to accept a work assignment. During the meeting it was again determined that appellant was working eight hours per day as a gas station attendant, that he was not a full time minister and not a regular Pioneer [Ex. p. 71].

Congress has made it clear that to be within the class of people eligible for the ministerial classification a member of the Jehovah's Witness faith must be more than a general member of the faith, he must be a leader of his congregation, analogous to the leaders of other faiths.

Congress took care to explain their intent in passing the ministerial classification. Senate Report No. 1268, 80th Congress,

Second Session, dated May 12, 1948, starting on page 13 provides in pertinent part:

> " . . . Serious difficulties arose in the administration and enforcement of the 1940 Act because of the claims of members of one particular Faith that all of its members were ministers of religion. A minority of the Supreme Court thought that Congress intended to grant an exemption broad enough to include this group. In order that there be no misunderstanding of the fact that the exemption granted is a narrow one, intended for the leaders of the various religious faiths and not for the members generally, the term 'regular or duly ordained ministers of religion' have been defined in Section 16(g). "

The appellant is a Jehovah's Witness. The courts on many occasions have had occasions to review the organizational structure of the church of Jehovah's Witnesses. The best discussion may be found in United States v. Tettenburn, 186 F. Supp. 203 (1960). The case points out that from the moment a man is baptized into the faith he is considered by all members to be a duly ordained minister. But this does not mean he is the leader of the local church. The leader in each congregation is the Congregation Servant. The members in general may have other titles, such as assistant minister, bible study servant, magazine servant, but the leader is the Congregation Servant. He is the one to whom the remainder of the

congregation looks to for guidance. It is clear that appellant never achieved the status of a leader of his congregation.

B. THE CIVILIAN WORK ASSIGNMENT SELECTED FOR APPELLANT WAS APPROPRIATE.

Appellant contends that the civilian work assignment selected for him was not suitable in that it did not fit his special abilities and further that the work was in his home community.

Appellant is clearly incorrect in suggesting that the word "appropriate" found in 32 C. F. R. §1660.1 establishes that certain types of individuals conscientiously opposed to war must be given civilian work assignments which most closely correspond to their talents and training. Section 1660.1 merely defines the types of civilian work which are appropriate under the act. Nowhere in §1660.1 does it state that individuals with special skills must be assigned a similar type of work for a civilian work assignment.

Furthermore, in each instance that appellant was given an opportunity to submit the type of work which he might prefer as a civilian work assignment he refused to do so stating that he would refuse to select any type of work proffered [Ex. pp. 26, 50, 59, 65, 71, 72].

Appellant stated, in court, that the work offered him would have involved the handling of blood which was contrary to his religious beliefs. This argument might well have been made upon the occasion of his meeting with his local board to select an

appropriate work assignment. To first refuse any work at all and then to come into court and testify that the work assignment was inappropriate because it is violative of his religious beliefs is an untenable argument at best. Appellant made no showing at the appropriate time that he was opposed to work in a hospital and it can only be concluded, as he himself stated on numerous occasions, that he would not have accepted any civilian work assignment, regardless of what type of work it might have entailed.

Finally, appellant's rights were in no way violated nor was any procedural error committed when the appellant was assigned a civilian work assignment in his home community. Section 1660.21 merely states that no registrant will be assigned a civilian work assignment in the community in which he resides unless the local board deems such work is the registrant's home community to be desirable. Appellant's local board notified him that work as an institutional helper at the Los Angeles County Department of Charities was "appropriate". That is all that the regulation requires.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of conviction of appellant Victor Landston Langhorn should be affirmed.

Respectfully submitted,

WM. MATTHEW BYRNE, JR.,
United States Attorney,

ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,

ANTHONY MICHAEL GLASSMAN,
Assistant U. S. Attorney,

Attorneys for Appellee,
United States of America.

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Anthony Michael Glassman
ANTHONY MICHAEL GLASSMAN